

Message Text

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PAGE 01 STATE 012855

63

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C O N F I D E N T I A L STATE 012855

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E.O. 11652: GDS

TAGS: ETRD, SZ

SUBJECT: ANTITRUST: FTC INVESTIGATION OF NESTLE/STOUFFER
CASE

REF: BERN 0032

1. DURING JANUARY 16 CALL ON ASSISTANT SECRETARY ENDERS,
AMBASSADOR JOLLES AND AMBASSADOR SCHNYDER WERE TOLD IN
CONFIDENCE THAT THE FEDERAL TRADE COMMISSION HAS VOTED

UNANIMOUSLY TO FILE A FORMAL COMPLAINT AGAINST NESTLE
CONCERNING ITS ACQUISITION OF THE STOUFFER CORPORATION.
NESTLE WILL BE CHARGED WITH VIOLATION OF SECTION 7 OF
CLAYTON AND SECTION 5 OF FEDERAL TRADE COMMISSION ACTS.
SPECIFICALLY, FTC CLAIMS EFFECT OF STOUFFER ACQUISITION
BY NESTLE HAS BEEN OR MAY BE TO LESSEN COMPETITION, TEND
TO CREATE A MONOPOLY, OR RESTRAIN TRADE IN THE MANUFACTURE,
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PAGE 02 STATE 012855

DISTRIBUTION AND SALE OF FROZEN ENTREES IN THE UNITED

STATES.

2. THE SWISS OFFICIALS WERE TOLD THE FTC DECISION MUST BE KEPT CONFIDENTIAL WITHIN THE SWISS GOVERNMENT UNTIL FTC PUBLIC ANNOUNCEMENT BECAUSE OF STOCK MARKET IMPLICATIONS.

3. DEPARTMENT OFFICERS EXPRESSED REGRET THAT THE DECISION WAS NOT ONE THE SWISS HAD HOPED FOR, BUT STRESSED FIRM CONVICTION THAT FTC HAD HANDLED THE INVESTIGATION IN FAIR, NON-DISCRIMINATORY MANNER. INDEED, FTC HAD GONE BEYOND ITS USUAL PRACTICE TO PROVIDE NESTLE OFFICIALS AND LAWYERS THE FULLEST OPPORTUNITY TO EXPRESS THEIR VIEWS IN DETAIL TO THE FTC CHAIRMAN, COMMISSIONERS AND STAFF. NESTLE WILL STILL BE GIVEN AMPLE OPPORTUNITY TO PRESENT ITS VIEWS AT VARIOUS STAGES IN THE FORTHCOMING FORMAL HEARINGS AND BEFORE THE COURTS IF DESIRED.

4. JOLLES EXPRESSED APPRECIATION FOR DEPARTMENT'S HELP AND FAIR TREATMENT IN NESTLE/LIBBY CASE. HE THEN STATED HE DID NOT WISH TO DISCUSS MERITS OF STOUFFER CASE, BUT HE WOULD BEGIN AS SOON AS THE NEWS IS RELEASED TO ATTEMPT PLAY DOWN IMPORTANCE OF THIS ACTION AND LIMIT POSSIBLE ADVERSE SWISS REACTION. FOR EXAMPLE, IN HIS CONTACTS WITH SWISS PRESS AND BUSINESSMEN, HE WILL POINT TO FAIR FTC TREATMENT IN NESTLE/LIBBY CASE, OPPORTUNITY NESTLE HAS HAD TO PRESENT ITS VIEWS, AND OPPORTUNITY TO NEGOTIATE SETTLEMENT BOTH BEFORE AND AFTER ANNOUNCEMENT OF COMPLAINT.

5. FTC PLANS INFORM NESTLE'S U.S. COUNSEL OF COMPLAINT MORNING JANUARY 20. IF NESTLE DOES NOT INDICATE INTEREST IN NEGOTIATING A SETTLEMENT, FTC WILL PROBABLY MAKE THE COMPLAINT PUBLIC AFTERNOON JANUARY 21.

6. DEPARTMENT WORKING CLOSELY WITH FTC IN EFFORT MAKE THE ANNOUNCEMENT AS POSITIVE AS POSSIBLE. ANNOUNCEMENT WILL INCLUDE MENTION OF FAVORABLE FTC DECISION IN NESTLE/LIBBY CASE AND STATEMENT ABOUT FTC EFFORTS TO ENSURE FAIR TREATMENT OF NESTLE. DEPARTMENT OFFICERS WILL ALSO CONFIDENTIAL

CONFIDENTIAL

PAGE 03 STATE 012855

SPEAK TO LEADING SWISS OR EUROPEAN JOURNALISTS IN ATTEMPT ENSURE BALANCED REPORTING.

7. DEPARTMENT WILL KEEP EMBASSY INFORMED OF FURTHER DEVELOPMENTS AND FORWARD COMPLAINT AND RELATED PRESS RELEASE WHEN THEY BECOME AVAILABLE. KISSINGER

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